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September 14, 2004

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SEP 14 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

**Re: Broadband PCS Spectrum Auction Scheduled for January 12, 2005,
Comment Sought on Reserve Prices Or Minimum Opening Bids And Other
Auction Procedures, *Public Notice* DA 04-1639**

**Petition for Rulemaking or, Alternatively, a Waiver of the
Entrepreneur Eligibility Restrictions on C Block Licenses in the
Broadband Personal Communications Services, RM-11019**

**Petition for Amendment of Part 1 of the Commission's Rules to
Include a Personal Net Worth Limitation for Competitive Bidding Small
Business Preference Eligibility, RM-10956**

Notice of Ex Parte Meetings

Dear Ms. Dortch:

On behalf of the Minority Media and Telecommunications Council ("MMTC"), and pursuant to Section 1.1206 of the Commission's rules, this is to notify you of *ex parte* meetings held in connection with the above-captioned proceedings.

On September 13, 2004, David Honig, Executive Director of MMTC, and the undersigned met with Commissioner Adelstein, his Senior Legal Advisor, Barry Ohlson, and Commissioner Adelstein's Legal Advisor, Joanna Shelton. We also met with Paul Margie, Legal Advisor to Commissioner Copps. In the meetings the representatives of MMTC reiterated their support, as evidenced by MMTC's pleadings in these proceedings, for the retention in Auction 58 of the Commission's Designated Entity ("DE") rules, including the Commission's current C-Block eligibility rules.

During the meetings, the representatives of MMTC noted that the C-Block eligibility restrictions were originally created to satisfy sections 309(j) and 257 of the

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Communications Act, 1/ provisions that require the Commission to create meaningful opportunities for small, minority-owned and women-owned businesses to acquire the spectrum needed to provide wireless services. When promulgating the rules the Commission indicated that a broadband PCS spectrum set-aside ("C-Block spectrum set-aside") was essential to satisfying its statutory obligations. 2/

The representatives of MMTC also noted that the Commission's August 2000 decision to modify the C-Block rules 3/ eliminated more than half of the C-Block spectrum set-aside and that a further erosion of the C-Block spectrum set-aside would make it impossible for the Commission to satisfy its statutory obligations.

MMTC took the opportunity during the meetings to refute some of the false contentions made in these proceedings by CTIA and the larger carriers that would not qualify to bid on the closed C-Block licenses under the existing rules as follows:

- False Contention: DE companies do not build out their licenses, but merely flip them to the larger companies.

Truth: Numerous DEs have successfully built out their networks after having acquired their licenses through closed bidding. Examples of successful DE build outs include: Omnipoint, Cook Inlet, Leap, Metro PCS, Chase Telecom, Clearcomm, Telecorp and Tritel, just to name a few. Many successful DEs initially built out and provided service in areas where the larger carriers did not initially wish to operate.

- False Contention: Because the C-Block spectrum set-aside has not resulted in large numbers of minority-owned PCS licensees, it should be eliminated.

Truth: Several minority-owned companies, including Cook Inlet, Chase, Clearcomm, Integrated Communications and Urban, to name a few, were able to acquire PCS licenses as a result of the Commission's C-Block spectrum set-aside. It is true, however, that the policy is not perfect, and MMTC certainly believes that significantly more progress

1/ 47 U.S.C. §§309(j), 257.

2/ Implementation of Section 309(j) of the Communication Act – Competitive Bidding, *Fifth Memorandum Opinion & Order*, 10 FCC Rcd 403, 414-15 ¶16 (1994).

3/ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, *Sixth Report & Order and Order on Reconsideration*, 15 FCC Rcd 16266 (2000).

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could be made with policies more specifically targeted at minorities. The Supreme Court's equal protection decisions ^{4/} require that the Commission first evaluate the success of race-neutral policies for promoting minority ownership before promulgating race-specific policies. Contrary to the self-serving arguments of the larger carriers, the fact that the current race-neutral policies have not produced an adequate number of minority-owned licensees when compared to the percentage of minorities in the general population does not mean that the Commission should throw up its hands, admit defeat and abandon all efforts at promoting minority ownership. Instead, the Commission must respond to the inadequate numbers by redoubling its efforts and considering more race-specific policies. Because the current race-neutral policies have produced more minority-owned PCS licensees than would exist without any policy at all, this is not the time to eliminate the current C-Block spectrum set-aside.

- False Contention: Spectrum partitioning, disaggregation and leasing now afford minority-owned businesses viable alternatives for gaining a foothold in the wireless market place.

Truth: Although MMTC appreciates the steps the Commission has taken to create more secondary market opportunities to access spectrum, the fact remains that many of the larger carriers are reluctant to make their spectrum holdings available to potential competitors such as DEs. Once these programs mature, they may become more effective at promoting minority ownership. However, they should not be viewed today as adequate substitutes for the DE spectrum set-aside.

Finally, the representatives of MMTC indicated that any proceeding to modify the existing C-Block eligibility rules would unnecessarily delay Auction 58 and introduce a level of uncertainty into the market place that would impair significantly the ability of small, minority-owned and women-owned businesses to secure Auction 58 financing.

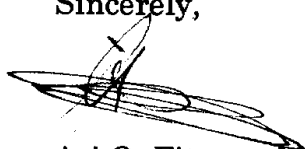
An original and one copy of this letter are being submitted for inclusion in the proceeding record.

^{4/} See *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

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Sincerely,

A handwritten signature in black ink, appearing to read 'Ari Q. Fitzgerald', with a large, sweeping flourish underneath.

Ari Q. Fitzgerald
Counsel for Minority and Media
Telecommunications Council

AQF/bgg
Enclosures

cc: Commissioner Adelstein
Barry Ohlson
Joanna Shelton
Paul Margie